IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1649 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AJITBHAISHIVABHAIMAACHHREKARCHHARA - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/12/2005

ORAL JUDGMENT

1. Ajitbhai Shivabhai Maachhrekar Chhara-petitioner-externee has filed this petition challenging the order of externment dated 29.03.2005

passed by Deputy Commissioner of Police, Ahmedabad city-respondent No.2 under the provisions of Bombay Police Act,1951 (hereinafter referred to as 'the Act') and has, further, prayed for appropriate writ or mandamus as well as certiorari to quash and set aside the order dated 05.11.2005 passed by Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.1, confirming the order of externment passed by respondent No.2 externing the petitioner from the City of Ahmedabad, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of two years in this behalf.

2. The present petition was filed on 25.11.2005 and this Court issued RULE on 29.11.2005 and that is why this matter has come up before this Court for hearing and final disposal.

3. Heard, Mr. H.R. Prajapati, learned Advocate for the petitioner and Mr. Pujari, learned A.P.P. in this behalf.

4. Learned Advocate for the petitioner has invited my attention to show-cause notice dated

11.11.2003 issued by respondnet No.2 under the provisions of Section 56A of the Bombay Police Act. In the said show-cause notice six offences have been shown as registered against the externee at Sardarnagar Police Station.

5. He further submitted that it was stated in the said show-cause notice that by committing such offences petitioners is spreading terror and if he is allowed to continue his activities in the said area there will be disturbance of 'public order'. In this behalf, the authority has also recorded statements of four persons. Therefore, the order of externment is passed against the petitioner-externee.

6. Thereafter, the petitioner through his Advocate has replied to the said show-cause notice on 04.04.2004. In the reply it was stated that externee is a 'lawyer' by profession and he is wrongly involved in the said offences registered against him.

6.1 Thereafter, Deputy Commissioner of Police, Ahmedabad city-respondent No.2 passed order dated 29.03.2005 externing the petitioner from the City of

Ahmedabad, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of two years in this behalf.

7. Being aggrieved and dissatisfied with the said order, petitioner filed an appeal before state government through Deputy Secretary, Home Department-respondent No.1 for obtaining stay and the same was disposed of by respondent No.1 by its order dated 05.11.2005.

8. Learned Advocate for the petitioner has further stated that the order of externment passed by the externing authority is bad in law on the ground that show-cause notice was issued on 11.11.2003 and the order of externment was passed on 29.03.2005. Therefore, there is an unreasonable or unexplained delay of about sixteen months in passing the order. Learned Advocate further submitted that externing authority has not considered the provisions and objects of the Act, and therefore, in view of the long delay of about sixteen months order of externment is liable to be quashed and set aside.

9. Learned Advocate for the petitioner has submitted that if there is unreasonable delay and the same is not explained, the order of externment is liable to be quashed and set aside. In support of the same, learned Advocate has placed reliance on one un-reported Division Bench judgment of this Court in Special Criminal Application No.1295 of 1994 decided on 24.06.1995 (Coram: K.J. Vaidya & S.D. Dave,J.J.)in the case of ***Vasantiben Mukeshbhai Rander Vs. State of Gujarat.*** He has also placed reliance on the Division Bench judgments of this Court in the case of ***Chothamal Sagansingh Rajput Vs. State of Gujarat and Others*** (Coram:C.J., P.R. Gokulakrishnan & R.J. Shah,J.) reported in 1989 (30)(1) GLR 63 and another Division Bench Judgment of this Court (Coram: J.U. Mehta & B.J. Shethna,J.J.)in the case of Santosh Ramprasad Sharma Vs. Deputy Commissioner of Police, Crime Branch, Ahmedabad City, A'bad & The State of Gujarat reported in 1992 Cr. L.R. (Guj.) 360. He has further placed reliance on the decision of this Court in S.C.A. No.63 of 1996 in the case of ***Sitaben M. Thakore Vs. Deputy Commissioner of Police,*** decided by this Court (Coram: N.N. Mathur, J.)reported in

1997 Cr.Lr. (Guj.)139 GLH. He has further placed reliance on a recent judgment of this Court (Coram: K.M.Mehta,J.)decided on 01.12.2005 in Special Criminal Application No.1451 of 2005 in the case of ***Dilaji Bharthaji Vihol Vs. Deputy Commissioner of Police and Another***.

10. Learned Advocate for the petitioner has further submitted that in view of the scheme of the provisions of the Act and in view of the division bench judgments of this Court in the case of ***Vasantiben Mukeshbhai Rander(Supra)***and in the case of ***Chothamal Sagansingh Rajput*** (Supra) and also judgments of this Court in the case of Santosh Ramprasad Sharma(Supra) and ***Sitaben M. Thakore*** (Supra) and also a recent judgment of this Court in the case of ***Dilaji Bharthaji Vihol*** (Supra), if there is an unreasonable and unexplained delay from the date of notice till passing of the order, then in view of the same order is liable to be quashed and set aside. Therefore, the impugned order of externment deserves to quashed and set aside.

11. On the other hand, Mr. Pujari, learned A.P.P. has tried to support the order of externment passed by the authority in this behalf and he has placed reliance on the division bench judgment of this Court in the case of Mukesh Gopal Patel Vs. N.I. Saiyed, Dy. Commissioner of Police, Ahmedabad and Another reported in 1987 (1) GLH (NOC)6.

12. He has also stated that when the authority has passed the order of externment they have to follow the rules of natural justice in this behalf.

13. I have considered the provisions of the Act as well as division bench judgments and judgment of the learned single Judge in this behalf. I have also considered provisions of Section 56 and 59 of the Bombay Police Act. I have considered an unreported judgment of Division Bench judgment of this Court in the case of ***Vasantiben Mukeshbhai Rander***(Supra)and also another Division Bench Judgment of this Court in the case of ***Chothamal Sagansingh Rajput***(Supra), judgment of this Court in the case of Santosh Ramprasad Sharma(Supra) and also judgment of the

learned Single Judge in the case of ***Sitaben M. Thakore***(Supra)in this behalf. I have also considered a recent judgment of this Court in the case of ***Dilaji Bharthaji Vihol***(Supra) in this behalf.

14. From the record it appears that in this case show-cause notice was issued on 11.11.2003 whereas order of externment was passed on 29.03.2005. The authority has not given any reasons in the order of externment as to why there is a delay of about sixteen months in passing the impugned order. Even, the authority has not filed any reply to explain as to why there is dealy in passing the said order. In my view, the externing authority must satisfy subjectively that in such a case reply has been filed by the petitioner, witnesses have been examined and the principle of natural justice have been followed and that is why there is delay. If there is no such explanation given by the externing authority and passed the order of externment, as is done in the present case-the authority has passed the order of externment without giving credible or cogent reasons, on that ground only the order of externment deserves

to be quashed and set aside. Therefore, as there is a delay of about sixteen months which has not been explained by the authority while passing the order of externment, same is fatal to the case and therefore order of externment deserves to be quashed and set aside on this very ground of delay and taking over all view of the matter, particularly, provisions of externment.

15. In my view externing authority must satisfy subjectively that no witnesses are willing to come forward to depose against the petitioner before passing the order of externment. In this case the authority has passed order of externment after a great delay of about sixteen months which could have been avoided in this behalf. Therefore, the order passed by the externing authority is unreasonable and unjustifiable in this behalf, and therefore, same deserves to be quashed and set aside.

16. It may also be noted that even the petitioner has filed an appeal before the appellate authority raising the very same ground of

unreasonable and unexplained delay of about sixteen months in passing the order of externment. But, the same is not considered by the appellate authority. On the contrary, by its order dated 03.10.2005 the appellate authority confirmed the order of externment passed against the petitioner. In view of the, non consideration of this vital point by the appellate authority the order of the appellate authority confirming the order of externment also deserves to be quashed and set aside. More particularly, in view of the ratio laid down in the case of ***Vasantiben Mukeshbhai Rander***(Supra), ***Chothamal Sagansingh Rajput***(Supra), Santosh Ramprasad Sharma(Supra) and ***Sitaben M. Thakore***(Supra) and also recent judgment of this Court in the case of ***Dilaji Bharthaji Vihol***(Supra) the orders of externment passed by the externing authority and confirmed by the appellate authority are unreasonable and unjustifiable in this behalf, and therefore, both the orders deserve to be quashed and set aside.

17. In the result, this petition is allowed and order of externment dated 29.03.2005 passed by

respondent No.2 externing the petitioner as well as order dated 05.11.2005 passed by respondent No.1 confirming the said order is quashed and set aside. Rules is made absolute accordingly with no order as to costs. Direct service permitted.

(K.M.MEHTA,J.)

Umesh/